IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 500 of 2001

in

SPECIAL CIVIL APPLICATIONNo 5709 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

NAVIINCHADRA L MANDAVIA

Appearance:

MR SK PATEL, AGP for Appellants

MR ASHIN H DESAI for the respondent

CORAM : MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE H.H.MEHTA

Date of decision: 16/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE J.M.PANCHAL)

The Presiding Officer, Labour Court, Bhavnagar is not a necessary party and, therefore, is ordered to be deleted from the proceedings.

Admitted. Mr. Ashin H.Desai, learned counsel waives service of notice on behalf of the respondent. Having regard to the facts of the case, the appeal is taken-up for final disposal today.

By filing this appeal under clause 15 of the Letters Patent, the appellants have challenged legality of judgment dated April 27, 2000 rendered by the learned Single Judge in Special Civil Application No. 5709/96, by which direction given by the Labour Court to reinstate the respondent in service is upheld, but the direction given by the Labour Court regarding backwages is modified in favour of the present appellants.

2. The respondent was employed as a driver by the appellants. Though he had put in 240 days of service, he was retrenched on August 13, 1989 without following the provisions of section 25F of the Industrial Disputes Act, 1947 ("the I.D. Act" for short). He had, therefore, raised dispute regarding legality of termination of his services. The dispute was referred to Labour Court for adjudication. On appreciation of evidence led by the parties, the Labour Court held that it was proved by the respondent that he had put in more than 240 days of service. It was not pointed out by the appellants that before terminating services of the respondent they had followed the provisions of section 25F of the I.D.Act. Therefore, the Labour Court deduced that the retrenchment of respondent was in breach of provisions of section 25F of the I.D.Act. In the ultimate result, the Labour Court, Bhavnagar by award dated February 27, 1996 directed reinstatement of the respondent in service with 70% backwages.

3. Feeling aggrieved by the said award, the appellants preferred Special Civil Application No. 5709/96. The appellants could not point out that before effecting retrenchment of the respondent they had followed the provisions of section 25F of the Act and, therefore, the learned Single Judge held that direction given by the Labour Court to reinstate the respondent

no.1 in service was justified. So far as backwages are concerned, the petition is partly allowed and the learned Single Judge has directed that the appellants shall pay 50% backwages as revised from time to time for the period from August 13, 1989 to February 27, 1996 and full wages from February 27, 1996 to the actual date of reinstatement in service, subject to adjustment of any payment either under section 17B of the I.D.Act or wages which might have been paid by the appellants to the respondent workman,by judgment dated April 27, 2000, giving rise to the present appeal.

4. Mr. S.K.Patel,learned counsel for the appellants submitted that the respondent was working as a driver on daily wages and, therefore, his reinstatement in service directed by the Labour Court ought to have been set aside by the learned Single Judge. It was claimed that the respondent had not put in 240 days of service and, therefore, also reinstatement directed by the Labour Court should have been set aside by the learned Single Judge. What was claimed was that Irrigation Department of the Government is not an 'industry' within the meaning of the word 'industry' as defined in the I.D.Act and, therefore, the appeal should be entertained. It was also argued that the direction given by the Labour Court, which is upheld by the learned Single Judge amounts to giving employment to the respondent by backdoor entry and, therefore, the impugned judgment should be set aside.

5. Mr. Desai, learned counsel for respondent workman on the other hand submitted that the evidence led by the respondent clearly established that the respondent no.1 had put in 240 days of service and that the appellants had not complied with the provisions of section 25F of the I.D.Act before effecting his retrenchment and, therefore, the learned Single Judge did not commit any error in upholding the direction of the Labour Court to reinstate the respondent no.l in service. What was stressed was that the Irrigation Department of the Government is an 'industry' and, therefore, the judgment of the learned Single Judge upholding the award of the Labour Court should be confirmed.

6. We have heard the learned counsel for the parties and considered the documents forming part of the petition. It is too late in the day to argue that the Irrigation Department of the Government is not an 'industry'. The principles laid down by the Supreme Court to ascertain whether a particular activity is an 'industry' or not are well settled. Applying those

principles to the facts of the present case, we find that the learned Single Judge did not commit any error in holding that the Irrigation Department of the Government is an 'industry'. The fact that the respondent had put in 240 days of service and that before effecting his retrenchment from service, provisions of section 25F of the I.D.Act were not followed, is a finding of fact and not seriously challenged in the present appeal. As provisions of section 25F of the I.D.Act were not complied with, the Labour Court was justified in directing reinstatement of the respondent in service. Therefore, the view taken by the learned Single Judge that the Labour Court was justified in directing reinstatement of the respondent in service cannot be said to be erroneous at all. The learned Single Judge has exercised discretion regarding backwages in favour of the appellants and reduced the amount of backwages payable to the respondent and, therefore, rightly no grievance is raised by the learned counsel for the appellants regarding direction given by the learned Single Judge for payment of backwages. On overall view of the matter, we are satisfied that the learned Single Judge has not committed any error in directing reinstatement of respondent in service with backwages as indicated in the impugned judgment. The result is that the appeal is liable to be dismissed.

For the foregoing reasons, the appeal fails and is dismissed with no orders as to costs.

(J.M.Panchal,J.) (H.H.Mehta,J.)

(patel)